

UNITED STATES HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE DEMOCRATIC FORUM

MEDICAL MALPRACTICE

Tuesday, February 8, 2005

2:14 p.m.

Room 2141

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I N D E X

Mr. Conyers	3
Mr. Scott	8
Mr. Delahunt	11
Ms. Sanchez	12
Ms. Jackson Lee	33
Ms. Schakowsky	37

PANELISTS:

Kathy Olsen, Chula Vista, California	15
Joanne Doroshow, Executive Director, Center for Justice and Democracy	21
Sherry Keller, Conyers, Georgia	40
John McCormack, Pembroke, Massachusetts	44
Bob Hunter, Director of Insurance, Consumer Federation of America	53
Justin Mattes, Woodcliff Lake, New Jersey	59
Lisa Muscarella, Flagstaff, Arizona	61
Mark Unger, Eagle Point, Oregon	63
Sally Greenberg, Senior Product Safety Council, Consumers Union	64
Leslie Lewis, New York, New York	69
Andrew Zuckerberg, Wellington, Florida	74
Ken Duplechain, Mamou, Louisiana	76
Rebecca Brailsford, Highland, Utah	80
Dylan Malone, Everett, Washington	87
Camille Teichman, Seaford, New York	90
Helen Haskell, Columbia, South Carolina	93
Kristine McCown, Fairbury, Nebraska	98

Michelle Geyer, Antioch, California

104

P R O C E E D I N G S

MR. CONYERS: Good afternoon, everybody. I am so glad we are all together this afternoon for a Judiciary Democratic Forum on Medical Malpractice, one of the most pressing issues that we need to examine clearly as we begin the 109th Session.

A few of you, I have seen before. Most of you, I haven't. But I have with me some of the finest members of the Judiciary Committee: Congressman Bobby Scott of Virginia, to my left; Congresswoman Linda Sanchez, a great former labor lawyer from Los Angeles, California; and the inimitable William Delahunt of Massachusetts, who works with me on not only Judiciary matters, but on Foreign Affairs activities, as well. As a matter of fact, he serves on that committee.

We are delighted to be joined by such experts as Bob Hunter, the Director of Insurance, Consumer Federation of America; and Joanne Doroshow, Executive Director of the Center for Justice and Democracy; Sally Greenberg, Consumers Union; and Frank Clemente--where is Frank? He is on the way.

What I wanted to do this afternoon is for us to have as candid and as personal discussion--these matters are all so terribly personal and I am so grateful to our special friends that have joined us, Kristine McCown of Nebraska, Deborah Gillham of Maryland, John McCormack of Massachusetts, Diane Meyer of Nevada, and Kathy and Scott Olsen of California.

I just want to take a couple of minutes for us to introduce our positions. I am going to call on my colleagues and I am grateful to them, and others will be coming in. Members are en route already. I want to thank all of the cooperation we have received from the media and from the chairman of the Judiciary Committee, Jim Sensenbrenner, who has been so cooperative with us.

Once again, we find ourselves visiting proposals by the President of the United States to cap awards for pain and suffering and limit malpractice judgments. I think this is extremely wrongheaded and I think that we want to have a candid discussion about it today to see if my presumption is correct.

Now, let me remind everyone that the reason

malpractice insurance premiums are rising is that investment income by insurance companies is plummeting, and this does not require an economics major to understand that insurers make their money from investment income, and during the years of high stock market returns and interest rates, malpractice premiums go down, and when investment income decreases, the industry responds by sharply increasing premiums and reducing coverage, creating a liability insurance crisis, quote-unquote. This boom and bust cycle has happened before in the 1970s, in the 1980s, and it is happening again now.

The draconian laws capping damages do not reduce insurance premiums. Study after study after study have proven this to be true. In a comparison of States that enacted severe tort restrictions in the mid-1980s and those that resisted enacting any sort of tort reform, no correlation was found between tort reform and insurance rates. In fact, a recent GAO report found that there is no correlation between losses paid by medical malpractice insurance and limitations on non-economic damages.

In the State of Michigan, from which I hail, which

has caps on damages, malpractice premiums are 67 percent higher than in States without caps on damages. California, another case in point, which in 1975 enacted the Medical Injury Compensation Reform Act to which many of the provisions in the conservatives' bill in the Congress are modeled, despite these reforms, premiums for medical malpractice in California grew more quickly between 1991 and 2000 than in the nation. And between 1975 and 1993, California's health care costs rose 343 percent, almost double the rate of inflation.

Now, there is an old saying, you have heard it, fool me once, shame on you. Fool me twice, shame on me. And so in 1994, the big insurance companies spent over \$50 million on tragically misleading ads to derail health care reform, and ten years later, the health care system is in shambles. They fooled us once.

Now, the huge insurance companies are trying to convince us that the cause of skyrocketing medical malpractice premiums is trial lawyers, that the medical malpractice premiums that are going up is because of the trial lawyers. Shakespeare had something to say about that

in one of his plays. The king and his minions hatched a plan. The first thing to do, let us kill the lawyers. A corrupt king and his followers are trying to figure out how to suspend everybody's freedoms and rights, and the only people who could stand up for the regular people are the lawyers.

The reality is grossly negligent health care professionals have more to do with high awards than the lawyers. Whatever the reason for the anger that the President has toward lawyers--he was not accepted in Yale Law School--his proposal doesn't hurt lawyers nearly as much as it hurts innocent victims of medical malpractice. So we won't be fooled again.

The reality is that almost 100,000 people die in this country each and every year from medical malpractice. The last thing we need to do is exacerbate this problem while ignoring the true causes of the medical malpractice crisis in America. And yet, that is precisely what these Republican proposals do.

Now, it is only a small handful of health care professionals that are responsible for most of the

malpractice claims that are paid, and Americans get standard care for their ailments about half the time even if they live near a medical teaching hospital, and yet Republican proposals do nothing about patient safety. Rather than helping doctors and victims, their proposals will pad the pockets of insurance companies, health maintenance organizations, and manufacturers and distributors of defective medical products and pharmaceuticals.

And so I would like just to see if any of my colleagues would like to add a word or two on this before we turn to the Olsens of California. Anybody? Yes, Bobby Scott. Congressman Scott of Virginia?

MR. SCOTT: Thank you, Mr. Conyers, and I want to thank you for holding this hearing. We have heard a lot about tort reform and we know, as you pointed out, that there are a lot of medical mistakes. If we want to reduce malpractice, we need to reduce medical mistakes.

Medical malpractice premiums constitute between one and two percent of the health care costs. So even if we eliminated all responsibility for medical mistakes, you wouldn't have any appreciable difference in medical costs,

particularly in light of the fact that the health care costs are going up between nine and 12 percent every year. So reducing part of the one to two percent won't make any difference.

But if you do have tort reform, the cost of the mistakes will be shifted from the people making the mistakes to the victim. You make it more difficult to bring a case. You reduce the amount of recovery on behalf of the victim. So all you are doing is just shifting the cost of the malpractice mistakes onto the victims.

Some have said these victims are frivolous, and we are going to hear a little bit about what kinds of cases there are. Just yesterday, Mr. Conyers, we heard about these frivolous asbestos cases and how frivolous they are, because just yesterday, those frivolous victims saw one of the companies involved in asbestos distribution indicted in criminal court by this Justice Department.

[Applause.]

MR. SCOTT: They committed, according to the indictment, crimes in exposing people to dangerous asbestos. Limiting their ability to recover from criminal activity, I

think is the wrong way to go. The people who committed the crimes ought to be responsible.

So we will see in other cases what kind of cases there are and what kind of cases will be affected by tort reform. And for that reason, Mr. Conyers, I appreciate your calling this hearing today.

MR. CONYERS: Well, I appreciate Bobby Scott. Let us give Bobby Scott a round of applause for being here.

[Applause.]

MR. CONYERS: Congressman Bill Delahunt?

MR. DELAHUNT: Well, thank you, John. I had the honor to attend, I think it was a year ago, or maybe two years now, a similar forum. I just think that it is important that the media especially understand most of those whom are here today, their cases have been settled. Some haven't, but most of those that are here today are doing this for others, are doing it not for a member of their family, but are doing it because of a certain value.

You know, I guess that value we can call a community value, or an American value. But the reality is that this issue, particularly the proposal that would cap

so-called non-economic damages, is not a political issue.

It is a moral issue. That is what this is about.

If we are a moral society, we would never tolerate the idea of capping damages for people whom will never work for the rest of their lives, who have suffered in a way that myself and others here who, through the grace of God have not experienced a similar fate. So when we speak of moral values and what is good or bad or evil, the testimony that you will proffer here today is about what we are as a nation, whether we are a moral nation, whether we honor the observation of that Frenchman, DeToqueville, who eloquently stated sometime in the mid-1800s that America is great because America is good. Well, after participating last year in this particular forum, I see this issue in clear, unequivocal, moral terms. That is what it is about.

[Applause.]

MR. CONYERS: Thank you very much, Bill.

Congresswoman Linda Sanchez?

MS. SANCHEZ: Thank you, Congressman Conyers, and a big thanks to you and your staff for organizing this afternoon's listening session and to the speakers who were

courageous enough to come forward today to share their stories with all of us.

You know, I can't help but think it is really unfortunate that this isn't a bipartisan listening session or even an official hearing of the Judiciary Committee. But it is not a secret that the Bush administration and our Republican counterparts in the Senate and here in the House and even those at the State legislative level are trying to cap medical malpractice awards without even listening to the real victims of medical malpractice, people like our speakers that are here today.

These are people who have personally endured physical, psychological, and emotional pain and they have experienced it because of the negligence of a doctor. Their lives have been permanently altered because of a doctor's mistake, and our court system is supposed to be the place where they can seek justice and redress. But under the guise of tort reform, which to me is a terrible term--I think people should just be honest and call these tort reform efforts, you know, slam the courthouse door in the face of victims, because that is what they really do--they

deprive medical malpractice victims from having their day in court.

I know I hear this a lot about monetary damages, and we know that monetary damages can't begin to compensate anybody for a lifelong injury or, even worse yet, the death of a loved one. But our courts at least can give victims a sense of justice and an acknowledgement--an acknowledgement, even--that they have been wronged.

Stripping victims of the right to sue or placing arbitrary limits on damages, to me does nothing more than revictimize the original victims, and I think that is morally just reprehensible.

I firmly believe that emotional pain and suffering that medical malpractice victims experience should not be limited, and if proven, it should be compensated. That is the way our legal system works. And I also believe that those damages should be determined by a jury who hears the particulars of each case, not by some legislative body that is nameless and faceless and so far removed from the individual plaintiffs.

All of the victims of medical malpractice that are

here today telling their stories remind us why we have to continue this fight in Congress and why we have to oppose these so-called reform efforts of our tort system. I want to just thank you ahead of time for your courageousness and for your testimony today.

MR. CONYERS: Thank you, Congresswoman Linda Sanchez.

[Applause.]

MR. CONYERS: Now, we have got from California Kathy and Scott Olsen. Their 12-year-old son was refused a CAT scan when he was two years old and the consequences are horrific. Welcome, Kathy. Welcome--is Scott over there behind you? There he is.

MRS. OLSEN: Scott is my husband and Steven is our son. He is going to be 15 this month.

MR. CONYERS: And Steven. Hi, Steven.

MRS. OLSEN: Say hi.

MR. CONYERS: Oh, great.

MRS. OLSEN: And thank you for conducting these meetings today. I actually was here two years ago and got to speak to most of you, I think, except for Ms.--

MS. SANCHEZ: I am new.

MRS. OLSEN: Yes. I was going to say, I don't think she was here. But we really appreciate this.

We actually went to court. It would have been, oh, 13 years ago. Things haven't changed much in 13 years in California due to the cap on medical malpractice that was enacted in 1975. And so for 30 years, California has been under what they consider the model tort reform.

Steven was hurt during a fall on a family outing. We brought him back into town. We were outside of San Diego. We brought him back in. He got repaired. We had to surgically fix a stick injury to his face. He was given antibiotics. We were sent home.

A week later, he started getting some headaches. He was rubbing his forehead, a low-grade fever. We were told--we went to two pediatric urgent cares--that basically he had the flu. He will be fine. Take him home, give him some Advil, whatever. And we said, what about last week? We were in for this facial injury. That has nothing to do with this.

It had everything to do with it. He suffered

irreversible brain damage. He is totally blind. He has some impulse control problems and many other things that go along with traumatic brain injury.

We actually were lucky enough to find an attorney in California who took this to court. In California, since we have been under MICRA and the limit of \$250,000 has been there for 30 years, we had a jury trial. They--we got to talk to them after the jury trial and after the verdict was entered and they said the hardest thing they had to decide on was what his pain and suffering would be. Everybody agreed that he would--the defense side, plaintiff's side, his life expectancy was 60 years, and they thought with all the losses and everything, what would this child's life be without that? And they came back with a jury award of \$7.1 million for pain and suffering.

As soon as the jury left the room, the defense gets to ask to make sure the MICRA law goes into effect and that \$7.1 million was reduced to \$250,000. So in Steven's case, they figured 60 years, \$250,000, his pain and suffering was only about \$4,000 a year for all the losses he had. They don't take into consideration the fact of what

catastrophic injuries may occur, what happens after the injuries, his life expectancy, if it goes beyond 60 years, any of those things.

During the trial, because it is a trial by jury if both sides agree to it, the defense argued that Steven, because he would get so many government services, that he would only need \$37,000 for his whole entire lifetime of 60 years. And the jury wasn't going to buy that. Even back in 1994, they--\$37,000? Not even annually. This is 60 years. Everybody was saying, well, what kind of government subsidy are we talking about? Well, MediCal, Medicaid, he would get Social Security Disability.

Steven is not entitled to Social Security Disability now because he lives with both of us and we are still married. If we were divorced and only one of us had him, he would be entitled to it, which to me is just about the worst thing for family values. If you split up, the kid can have the money. It almost seems ludicrous to think, oh, well, let us break up the family so he can get money, but that is the way the Social Security system is set up.

And as far as food stamps, public education, all

of this, there is no way that Steven could survive 60 years on \$37,000 for the rest of his life. That was his economic damages that they wanted to cap because they said in California, we have the collateral source rule, and as long as Social Security Disability is there and we have food stamps, all of that would be taken care of, so he could be basically on the burden of the taxpayers.

So even though doctors are insured and their insurance companies would like to make you think that somebody is taking care of him, it isn't going to be them, but it will be the taxpayer.

When Steven went into the hospital and this happened to him, he didn't have to register as a Democrat, a Republican, or an Independent. He now, after he came out, he is never going to get the choice, nor will he ever get the choice to vote. I ask of you, who represents these children? They are part of society. He was born here. He was raised here. And we need to look at this as, unfortunately, so many of these so-called victims, whether they are alive or whether they are here severely damaged, a lot of them are children. And we need to take care of the

children we have. Most of them, if seriously injured, will never get that opportunity to vote. We need people to represent them, too.

Thank you very much.

[Applause.]

MR. CONYERS: Thank you so much, Mrs. Olsen. We appreciate that. I am glad you are still hanging in there.

I know we are all glad that JoAnne Doroshow of the Center for Justice and Democracy, one of our experts, is here. I would like to just recognize her now because she may be able to segue and throw some additional light on this incredibly awful case, a young boy blind and brain damaged because an HMO refused to give him an \$800 CAT scan.

Joanne?

MS. DOROSHOW: Thank you, Mr. Conyers. We are so appreciative that you have allowed these families to come and speak to you today. They have traveled from all over the country, from 50 families from 26 States, to lobby members and to hopefully speak to members of the press and to make sure that people understand, like the Olsen family, the real stories behind these cases. There is not a single

frivolous case in this room. I would even ask everybody who is not sitting at the table who are part of the families who have come down, just raise your hands so we see how many of you are here.

[Applause.]

MS. DOROSHOW: They have also requested to meet with the President repeatedly for the last two years. The President has continuously refused or ignored their requests while continuing to meet with representatives of the health care industry and the corporate lobbyists that are pushing for caps and other restrictions on injured victims' rights. We are hoping eventually the President decides that he needs to hear from the very people, like the Olsens, the very people that would be most affected by this proposal, this cap.

The bill that he has proposed and that is being considered in Congress is based on the California law, which is what has been so tragic for the Olsen family, for the Geyer family, who is also with us today from California. Again, this bill has nothing to do with frivolous lawsuits. This bill would cap damages in virtually every case in this

room, or at least the cases would be subjected to this law. The most legitimate cases would be subjected to this law. The most severe injuries, the most catastrophic injuries for children and others, those injuries would be subject to this cap.

At the same time, this bill would reduce the accountability that hospitals and HMOs and drug companies and nursing homes have, because this bill is not just about medical malpractice. It is also about protecting the pharmaceutical industry, because the cases also involve drugs and medical devices that would be subject to this bill. In fact, a number of the families we have down here today are victims of unsafe drugs, Vioxx and others.

If the problem is that doctors are complaining about their insurance problems, we know how to fix that problem, and Bob Hunter is certainly an expert that knows better than anybody else the insurance industry's responsibility for creating this situation with premiums for doctors.

But you cannot solve this problem by taking away the rights of the people in this room and you cannot solve

the problem by focusing on the legal system. It is the insurance industry that is responsible for this, and the only way to solve that problem is by focusing on them.

Of course, the other aspect that everybody in this room is concerned about is patient safety, and there is certainly nothing in this bill which would help protect patients to make them safer. As a matter of fact, it would do the opposite. It would increase patient injuries and malpractice that goes on currently in hospitals.

So again, we are very, very thankful that you have taken the opportunity to listen to these families. These are the real stories, the untold stories behind this bill. We are hoping that members of Congress that we are lobbying over the next two days hear that message loud and strong. Thank you.

MR. CONYERS: Thank you so much.

[Applause.]

MR. CONYERS: Bobby Scott?

MR. SCOTT: I wanted to ask a question, because when you look at the so-called reforms, you want to see how they could affect a particular case. Do you know whether

they have joint and several liability in California?

MS. DOROSHOW: I think apparently yes, that MICRA did not overturn joint and several liability.

MR. SCOTT: On a case like this where there may have been several people, unknown, all you know is you had something that only happens when there has been some malpractice and if you can find one, then it is up to them to divide up the responsibility with insurance that has been arranged before. But if you don't have joint and several, how would you bring a case?

MS. DOROSHOW: Well, you would have to sue each individual potential party separately, I would imagine, and it would be very difficult. There are cases like Dylan Malone's case, where the doctor who was responsible for the malpractice left after that incident, went to Canada. He is back now and they are attempting to bring a case against him, but it was very, very difficult as a result of the fact that the doctor did leave.

MR. SCOTT: And if you don't have joint and several liability, what does that do to the expense of bringing a case?

MS. DOROSHOW: Oh, it increases it tremendously.

MR. SCOTT: For each one that is a defendant, approximately how much expert witness fees and other expenses would the plaintiff have to endure?

MS. DOROSHOW: Tens of thousands of dollars, probably into the hundreds of thousands of dollars for these cases.

MR. SCOTT: And does that come out of their recovery, or does the defendant pay that?

MS. DOROSHOW: Right. No, it comes out, as Kathy is shaking her head, it would come out of their recovery.

MR. SCOTT: And if you started with a \$250,000 cap and you have been saddled with hundreds of thousands of dollars of additional fees because of this reform, how do you bring a case?

MS. DOROSHOW: Well--

MR. SCOTT: Actually, I guess that is just a rhetorical question.

MS. DOROSHOW: True, very difficult to bring a case.

MR. CONYERS: Mrs. Olsen?

MRS. OLSEN: I would like to answer that, too, because our case did cost our side, the attorneys, well over \$100,000 in expert witnesses, depositions, everything, life care plan, try to figure out what he really needed. It was well over \$100,000, and that is part of the problem in California, unfortunately, with the cap and being a minor, they have no economic real recovery other than medical treatment that you foresee. If you don't foresee things coming up, that isn't even into the equation.

So it, first of all, costs the family so much, it becomes almost non-beneficial for attorneys to take your case, even if it is valid. That is why, in my eyes, why do people bring what they consider frivolous lawsuits when it costs so much to get into one in the first place? Any attorney who is going to take this on, unless they have money, the patients themselves, there is no way they could afford to litigate a case that isn't really valid, not in California because of the cap.

Unfortunately, like the Geyers, their daughter died. It is almost like, well, if you die, \$250,000 is all they are going to get, and that doesn't bring back their

child and there is no real recovery for a body like that. It doesn't mean it wasn't wrong. It just means they can't get an attorney because of the fact that life in California basically is worth \$250,000, and that makes no sense to us, child, adult. Unfortunately, unless you are a big wage earner, you will not recover anything. So if you are a housewife, if you are a retired citizen, even though you might be 60 and retired, your life is worth basically \$250,000--

MR. CONYERS: That is a shame.

MRS. OLSEN: --and you can't do that to people.

MR. CONYERS: That is a shame--

MRS. OLSEN: Before expenses, that is correct.

They have to take out expenses out of that after. So if you do this to the nation, people won't have any recourse other than to be on government assistance, and I don't think the U.S. Government can afford to do this. It is a catch-22 for those who have fallen into this. Medical care isn't good to start with, and then when this happens to you--we are all here because this has happened to us. We are not going to get back what we lost. We are not going to win any more in

a courtroom. We just need people to understand this is something that can't go on and it is not right.

MS. SANCHEZ: Mrs. Olsen, if I could just ask a quick question, you just sort of hit it for the second point, but I want to make sure that I am crystal clear on what you said. When they were discussing the damages in your son's case, the attorneys, and I am assuming they were attorneys for the insurer, were factoring into the damages the fact that your son would be receiving public assistance, money from the government, is that correct?

MRS. OLSEN: That is what it was all about. That is why they only allotted him \$37,000 for 60 years, because that is all he needed, according to them, and--

MS. SANCHEZ: So the fact that the doctor or the hospital has committed wrongdoing and has paid these mighty expensive premiums to an insurance company that is supposed to compensate a victim who is injured, they are banking on the fact, aren't they, really, that the government is going to pick up the tab and they have very little monetary responsibility at the end of the day.

MRS. OLSEN: They are counting on it. They are

counting on it. In California, medical malpractice insurance is the biggest money maker of any of the insurances in California. So even with the cap in California, how can we say--I still don't believe that doctors are all at fault here. I think it is an insurance issue and a patient issue. It doesn't have anything really to do with doctors versus lawyers. It is the patient who has been left out of this whole equation.

And for us, it just doesn't seem right, because there are people behind us. There are going to be more injuries. What if Steven belonged to somebody else, maybe not one of these parents here? Would he become part of the State's care? Well, he very well may be. And is that right, that we put every truly disabled, catastrophically injured child or adult in a State-run facility because, guess what, whoever caused this was relying on somebody else to pay for it?

MR. DELAHUNT: Will my colleague yield? I think that is a very good point. I think to sum it up, what we are saying is that for someone's negligence, some would have a taxpayer's subsidy. Isn't that really what it comes down

to, Kathy?

MRS. OLSEN: That is what it gets down to in California--

MR. DELAHUNT: Right.

MRS. OLSEN: --because that is the collateral source and they can bring that in and--

MR. DELAHUNT: If you err, if you make mistakes, don't worry about it because the taxpayer will pick up the bill.

MRS. OLSEN: That is what we are afraid of. We are taxpayers, too, and we don't think it is right for any of us, our children, our grandchildren. Somebody did this to Steven who was insured for this. Why should they have to be responsible--

MR. DELAHUNT: Well, I guess if you really embrace the concept of the welfare state, this really sounds pretty good.

MRS. OLSEN: Well, they would like these people to think that they are going to get service from people, and basically nobody else will be responsible but the government.

MR. CONYERS: Boy, oh boy. Thank you very much,
Bill Delahunt.

Ladies and gentleman, we have just been joined by
two very strong, powerful voices for justice in the
Congress. One is Ranking Subcommittee Member Congresswoman
Sheila Jackson Lee of Houston, Texas. Let us welcome her,
just bring greetings.

[Applause.]

MS. JACKSON LEE: In this forum, Mr. Conyers is
the chairman, and I want to say thank you, Mr. Chairman.
Why don't we applaud on that, as well. Thank you very much,
Mr. Chairman.

[Applause.]

MS. JACKSON LEE: I am delighted to be here with
all of my colleagues, only because I want to hear you. This
is not a pleasant experience, to sit in this room and to
have to make these kinds of choices. I guess that is the
comment as I look at all of the speakers and presenters who
have come here to this forum. I would like to say this is
an official Congressional hearing because you should be
heard.

We have listened to our President, and I call him our President because we are all Americans. We listened to the idea that the State of the Union, which is one of the most important speeches in America, took the time to mention an issue called medical malpractice and it took the time to mention it sadly for me, because it means that we divided ourselves as Americans.

We divided ourselves along what I would say victims, which some people would like to call plaintiffs--I say victims--and physicians, which many of us were raised to admire and to welcome into our homes, into our hearts, and really most times we are saying thank you, and they are hugging us, we are hugging them. We are in hospital hallways gathered around family members, listening for some good word between our own faith and the good will of our physicians. We support them and celebrate their expertise. And then, of course, lawyers who have gotten names that I wish not to say here in this hallowed ground, insurance companies, and simply plain families of the victims.

I think this forum is so very important. I could begin to articulate Supreme Court decisions, articulate what

we do in Texas. But I simply want to lay the ground rules and to thank you again for your presence and what I am here to hear.

We don't have a controversy or a crisis, and I always believe that America should deal with crises. We have victims here who are simply trying to get a sense of fairness. Now, if I gave you numbers, I will tell you that the insurance companies, by and large, through thick and thin, through the Iraq war, through the economic depression of the 1980s, have been one of the most profitable industries in America. And what they have been successful at doing is pitting the victim and their families against physicians, who have been told that they are being victimized, and all of these stories about closing their doors because of the victims.

It is really, Mr. Chairman, a question that we need to have asked and answered and the reason why we need to remain steadfast on medical malpractice opportunity and tort reform, and that is that there is no crisis. And frankly, what we need to do, Mr. Chairman, is to ask the hard question of what is insurance. It is an umbrella on a

rainy day. And if a physician through their own outward negligence, through some Achilles heel that they may have, through some, if I might be impolite in polite company, substance abuse or other problems that would cause them to undermine their Hippocratic oath, then they need not to be punished because we like to punish people, but the victims need to be compensated and they need to be compensated reasonably and for the length of time that is necessary.

This is a vital hearing because what we are hearing are the stories that tell us and provide us with the ammunition that is necessary, if you will, to cut the baby in half. What a terrible thing to say. But to be able to say to the insurance companies, we are not going to allow you to victimize any longer. We are not changing laws. We are not going to change our thought processes. We are going to ask for a fair and just system, fair to those who practice medicine correctly and fair to those victims who have been victimized because of some tragic situation that has occurred. We want our physicians. We want our victims, as well. We want them not to be here today, but we want our victims to be compensated, as well.

I thank you for holding this hearing.

MR. CONYERS: Thank you so much. Sheila Jackson Lee.

[Applause.]

MR. CONYERS: Now, one of the great voices for justice that was with us two years ago is back again with us, the Honorable Jan Schakowsky of Chicago, Illinois. Let us welcome her. Jan Schakowsky.

[Applause.]

MS. SCHAKOWSKY: Thank you, Mr. Chairman, for your leadership, and I want to thank all of the families who are here today to share, as painful as I know it is, your stories, which are so important to our deliberations on this issue.

You know, I sit on the Energy and Commerce Committee and we had an oversight hearing with the insurance industry. Now, let me make it clear that I think it would be wrong to take away the rights of injured people regardless of what it had to do with insurance rates because that is what we should do. But, of course, this is being offered as a solution to the problem of these high rates.

So facing me, I am on that panel, and facing me testifying is a representative of the medical malpractice insurance industry and I said, well, let us just say, okay, that we put a \$250,000, \$500,000 cap on how much money a victim could get. Could we also build into this bill a 25 percent reduction in rates? "Oh, no, certainly not." So I said, oh, okay. How about a 20 percent reduction? "Oh, that, no, we couldn't do that." Well, we got down to about five percent and I said, how about that, and they said, "Well, actually, we can't guarantee any reduction in rates." I looked at him and I said, so what are we doing here? What are we talking about here?

This is supposed to be the solution to this problem. Yes, it is a problem. We know that. You know that best of anyone. Malpractice is a problem. This is not the solution. And I think that this incredible disconnect has to be pointed out over and over and over again and particularly in the kind of poignant terms.

This is the real life consequence. Are people, are lawmakers going to look you in the eye and say, well, we can't allow these insurance rates to keep going up so we are

going to take it out of you and your children and you and you.

And so I thank you so much for being here today to bring home the real truth of what the problem is, a problem that we need to address, the problem of malpractice, the problem that 98,000 people a year are dying needlessly in hospitals because of medical mistakes. Yes, we need to deal with malpractice. This proposal is absolutely the wrong solution and I thank you so much for helping everyone realize that.

MR. CONYERS: Thank you.

[Applause.]

MR. CONYERS: Jan Schakowsky, on the case, no matter which committee she is on.

Before I call on John McCormack for just a few minutes, let us welcome back Sherry Keller, and the reason I remember her so well is that she is from Conyers, Georgia. Sherry, welcome back. I am sure you have been doing a good job on the Hill and I just wanted everybody to know that we remember you fondly.

MS. KELLER: Thank you, sir, Chairman. Yes, I am

back. I try very hard to separate my particular injury and what happened to me with the proposed legislation on tort reform. While these horrid acts of malpractice occur, the bottom line is my government, who I instill my trust in, has no place in the court system in my particular individual life. There is no jurisdiction to dictate my value as a human being. And with a \$250,000 cap, that is exactly what they are doing.

When I was injured, I was a stay-at-home mother. I will give a brief recap. I had had a complete hysterectomy. Now known, they didn't suture up underneath. They only used staples. They removed the staples seven days later, as per norm. That night, the wound oozed. The doctor called me into her office so she could check on the wound.

I was up on the gyno bed. She started to clean the wound, and when she cleaned the wound, she pulled on it. It opened up hip to hip, just like a Ziplock bag. I now know that is called a wound adhesion. Well, now I was going to take more time than what she had allotted. She left me on the gyno bed like that. We know she went and saw other

patients, made personal calls to her home.

I had gone into shock, lost consciousness, and fell from the bed, hitting my head on the counter on the way down. I suffered C2 through 7 fusion. I have plates, screws, all kinds of problems, traumatic brain injury, you name it. It was in there. I lost and regained consciousness at least five times that I can remember in an effort to pull myself into the hallway to get help, in order to be found.

From that point on, I was picked up from the hallway so other patients wouldn't see and know. She argued with my husband about whether or not to even call an ambulance. When my husband said he couldn't manage me in that condition, an ambulance was called. However, at this point in time, legally, the doctors have all the power. The ambulance company, by law, has to do what the doctor dictates.

She ordered transport only. I wasn't even given a collar on my neck. She called ahead to the ER, told them I was her patient, she will take care of it. Doctors don't step on other doctors' patients. She had all the control

over my care. My care meant nothing. Two-and-a-half hours later, I was sent home with a broken neck, which allowed my spinal cord to continue to swell and more and more damage to be done.

The doctor in this case considers my suit frivolous. It is her opinion. She believes it to be frivolous. President Bush might buy into her point of view. I say it is not frivolous, but it is not for my government to decide. It is for the jury of my peers to decide. It is a hard enough task going through the legal system, which is already weighted against the victim, much less for my government to also interfere and tell me my life, what I have endured, is worth only \$250,000.

I would like to also add that with the \$250,000 cap, I would have never been able to file my case. No attorney would be able to take on this task. It took me several tries to get an attorney to take my case. So while they might tout frivolous lawsuit and while they might tout winning the medical lottery, I would say you face the court system. You give up a life or a limb or a spinal cord and see if you have got a lottery ticket.

MR. CONYERS: Let me close up for right now just for a few minutes, because I want to turn to John McCormack of Massachusetts and welcome him to take a few minutes because we have got a few more people that we would like to get to. Welcome, Mr. McCormack.

MR. McCORMACK: Good afternoon, Mr. Conyers and distinguished committee. As a father, firstly, I want to thank you for hearing my daughter's voice today. My daughter died through medical malpractice, a failure in the system, and my family being misled.

This is a story about my daughter, Taylor, who was born with hydrocephalus, which is water on the brain. Two days after birth, a straw-like instrument was inserted into her skull. It was like a drain that dissolved fluid into the bloodstream.

On that fatal day, September 30, my daughter wasn't feeling right, so my wife called her pediatrician to get her advice and told my wife to call the hospital. And when my wife called the hospital, more or less, the physician just blew her off and told her to wait until Monday, which my wife didn't like the response, called back

the pediatrician and told my wife to just bring her right in there. That was on a Friday night. I was at work. I got a call late that night saying to come in because they were going to be performing surgery on my daughter.

During that time, they did tests and they found out that my daughter's shunt was blocked, so it was building up fluid into her brain. When I was brought into the emergency room, I saw my daughter over to the left, didn't make a sound. She was getting an IV right into her arm. The resident came back at that time and said, we have got good news and bad news. The good news is she is going to have surgery. The bad news is she got bumped. And we asked why she got bumped. Who was more important? She has a brain injury. They told us that the operating rooms were booked and they were busy.

Well, I now know and I have evidence that is not true at all. They had several opportunities to come down to save my daughter's life, but nobody ever attempted to give her aid. They brought my daughter up to the room, and keep in mind the fluids keep on building up and getting pressure into her brain. At two o'clock in the morning, she called

out for help to her mother, calling, "Mama," and to me, she knew she needed help. The resident took her blood test. It came back critical, that nobody ever read, carbon monoxide levels, and her health was deteriorating.

During the night, the pressure was building up, and at 6:10, the anesthesiologist came in to talk to my wife. When asking her questions about the surgery, the alarm, the heart monitor was going off, didn't even look at my daughter, my wife says, she's okay. Looked at the heart monitor, looked at my daughter, oh, she had a slow heart rate during the night.

So when my wife got up to look at my child, my daughter was blue. So the anesthesiologist called out to the nurse at the nurse's desk and she came running in and told the anesthesiologist to press the red button, which is the code button. And he goes, "What red button?" He didn't even know where the code button was at.

So my wife called me at her mother's house. I was babysitting with my two boys. I don't know how I did it, but I rushed over to the hospital as fast as I could. And I remember rushing up to the floor and seeing my precious

angel on the floor getting worked on with the ambu bag, trying to get oxygen in her lifeless body.

They brought her down for surgery. They called in a physician that wasn't on call, but they called him in. The surgery only took 45 minutes, 45 minutes to replace her shunt. After the surgery, he came out to explain to us we had to wait 72 hours for the brain swelling to come down and we started asking him questions.

Where was the attending physician? Nobody had any idea where he was at. We kept on asking, where was he? And we asked the resident, which he couldn't make the decision, but he left a junior person in charge. My wife said, you should have operated last night where he responded earlier that my daughter would have been fine and would have been home by Monday. And we were talking and he was telling us that this hospital failed us and we have to change our policies and procedures.

They brought my daughter up to the fifth floor. My daughter was in a coma for a week. And as you can see, they took a vibrant baby from me. They took her away from me. I saw seizures, open her eyes, closing her eyes. I

tried to do everything, pinching her toes, squeezing her arms, grabbing her fluffy bottom, but her bottom was like mush.

We had meetings during the week. One of the meetings pertained to my daughter had 98 percent brain damage and we had to make a decision because they told me my daughter would have been a vegetable. She would have had tubes, feeding tubes, breathing, and I had to make a decision if I wanted to take her off her life respirator or not.

This went on for a week, and on a Thursday, we had to attend to my two kids and my son was playing hockey and after the hockey game, we were putting his hockey bag in the car and he asked his mother if Taylor is ever going to come home again. And then right then, I made a decision. It was the most powerful and painful decision I had to make in my life, that I couldn't put my two boys through it.

So that morning, I called over to the hospital and said that we made the decision to take my daughter off life support. And during the morning, we met with the persons for transplants and I pleaded, you know, this is a healthy

baby. Please take these transplants. Take her heart, take her lungs, take anything that you possibly can and save another child's life. And due to the fact that she had 98 percent brain injury, she couldn't. But I do know that her heart valves were used in Virginia and Massachusetts.

During the afternoon, we took her off life support and gave her morphine. My daughter fought for three-and-a-half hours for the right to live. She was breathing, turning blue. She would give another gasp, stop breathing, turning blue, and gasp, and she did this for three-and-a-half hours. She fought for the right to live.

And when my child finally passed away, my two boys came in and said, "Love you, Tay-Tay," and I told my wife to take the boys, take them downstairs. I wanted to make sure they handled my daughter correctly. So the lady from the morgue came up and she had the morgue tray, but it was small for my daughter and she said she had to get another tray. I said, that is okay. We will just wait for security and I will carry my daughter down to the morgue myself. And I saw my daughter get wrapped and taped and I had a couple moments to her and I apologized for letting her down and that I was

very sorry and I promised her changes. And I carried her down to the morgue and I promised that I was going to make society better.

I was mad with the man upstairs for a while. It took me a long time to get over it. But I think God took my special angel to make this world a better place.

After the funeral and the wake, my youngest son went back to school and he told his mother that he had a great idea. He wanted to take the band-aid off Taylor's head and bring her home.

But getting back to the physician, the attending surgeon, the reason why they delayed surgery, he really should have been on call at the hospital. He went grocery shopping on company's time, put his pager on vibrate, went home, fell asleep, and didn't answer any of his pages.

The chief resident was on his way into the hospital, but once they couldn't find the attending, who was in charge to make the shots, he never showed up and he left a junior person in charge to call the shots.

It took me a long time to get over it, and I promised my daughter that I was going to make change, and

finally, after three-and-a-half years, I did make a change in honor of my daughter. I got a law passed called "Taylor's Law" in Massachusetts to give victims a voice, because in most States, victims do not have voices when they go to the Board of Registration of Medicine. They are totally shut out of the system.

And that is one thing I promised my daughter, to fulfill that promise, that I want your loved ones, your constituents, my extended family here to get Taylor's Law passed, like Amber's or Meghan's Law, because they do need a voice. They do not need to be shut out of the system.

And I wrote a couple letters to the President asking for him to meet with me about this issue. My philosophy is, he should be the President of the people and not special interest groups like medical companies, AMAs, medical device companies--

[Applause.]

MR. McCORMACK: --and drug companies.

And the last thing I would like to say, Mr. President, my family and the families gathered here today, our families' pain and suffering are not frivolous. Thank

you.

MR. CONYERS: Thank you so much.

[Applause.]

MR. CONYERS: What stories. What tragedies. You know, there are nearly 100,000 new cases of families every year that join our ranks, and we are getting stronger, we are getting more organized, we are becoming more determined, and we are getting people who are not the victims of these kinds of medical malpractice tragedies to join with us. I think we can turn this around, and that is why I am so proud of all my colleagues that are here and all of you who are up on the Hill visiting today.

I see Diane Meyer of Nevada is here. I am so happy to see her. Kristine McCown of Nebraska, welcome back.

I would like now to turn to the Director of Insurance of the Consumer Federation of America. Let us welcome Mr. Bob Hunter. Welcome, Bob.

MR. HUNTER: Good afternoon. I am sorry you all have to come here to fight for what seems so obviously right. It shouldn't require you to do all this. It should

be obvious to people who make public policy.

I have been asked by the chairman to look at what have caused these recent spike in insurance rates and what is the problem here, so let us go through it.

This is the third one of these we have had, as the chairman indicated. These are some of the headlines back from in the previous crises. Next chart.

This is caused by the economic cycle of the insurance industry. In 1974, there was a low of the insurance industry profitability. Again, in the middle 1980s. In 1992, that was Hurricane Andrew, so it really didn't cause the same kind of a crisis. And then in 2001, we had another crisis. This is what is causing these spikes in insurance rates.

I was the Federal Insurance Administrator in the mid-1970s when the first crisis hit. President Ford tasked me with looking at the crisis because the AMA and others were saying we need tort reform. That was in the era when Presidents actually did research before they took public policy positions.

[Laughter and applause.]

MR. HUNTER: To his credit, when we came back and said we did closed claim studies and found that there was no spike in claims, the President did not support tort reform at that time. I wish that the current President would do research before taking public policy positions, as well. Next chart.

It is very much tied to the Federal funds rate. The insurance industry is very heavily invested, and particularly medical malpractice insurers, in bonds. The crisis we are facing in the last couple years have a lot to do with what happened to the Federal funds rate. Next chart.

Here is the most amazing chart of all. This shows the per doctor premiums--that is the top line--and losses, adjusted for inflation. You can see the particular cycle in the premiums, spike in the mid-1970s, spike in the mid-1980s, going up now again at the end here. But look at the losses. Adjusted for inflation on a per doctor basis, they are flat. There is no crisis in losses. It just is untrue. In fact, in the last two years, the losses have actually dropped. Plus, in the last year, just reported

today by A.M. Best and Company, the premiums for medical malpractice went up four percent nationally--four percent. Why are we here? Next chart.

The malpractice lottery, you with all your frivolous lawsuits. In the last decade, we paid out--insurance companies paid out about \$40 billion. That includes million-dollar verdicts and little settlements for a few dollars. There were 1.3 million claims closed. That means the average payment was under \$28,000. Next.

Only 352,000 got any payment at all. So one in four claims that are filed get any payment at all, and if you were one of the four, the average payout was \$107,000. Next.

On average, 35,000 claims per year over the last decade got any money at all. You compare that with just the deaths, preventable deaths, the Institute of Medicine says of 44,000 to 98,000 per year. So it is clear, people are not filing a lot of lawsuits, and certainly the claims closing are very low. Next.

I have been studying the lawsuit reforms around the country. Rates continue to go up. We have already

talked about that. In the mid-1980s, I was fortunate enough to get onto the bill where they put in tort reform a requirement that within 60 days after the law became effective, the insurance companies had to file for their rate changes. Next.

Here is St. Paul basically saying the joint and several and non-economic caps, et cetera, were worthless. Next.

Aetna, same thing. Next.

Medical malpractice as a percentage of the health care expenditures is now six-tenths of one percent. If you capped victims at zero, it wouldn't change the cost of health care. Next.

I just suggest to the Congress, if you are going to do a proposed reform, put in the bill what it is worth. Your question was exactly right. The insurance companies will not promise to cut the rates if you put in tort reform. Next.

The steps have to be to cut the malpractice. That really is the issue.

And the last one, and you need insurance reform.

You have to do something about these spikes, get control on the rates. The reason California looks good is Proposition 103 was passed in California. Proposition 103 has actually controlled the rates much more than MICRA, and that is what we need, is insurance reform. Thank you.

MR. CONYERS: Thank you.

[Applause.]

MR. CONYERS: Now, there is a presentation with charts that we want to get to every member of the United States Congress, House and Senate, because these are the facts. This is what they don't want most of the citizens in this country to know about, and this is what we have got to get out. We are going to get the truth out, and it starts with the continuing perseverance of all of you and your families and supporters and friends who constitute a growing network of people determined to put truth on the face of medical malpractice.

Who would like to make a brief comment, not to last more than two minutes? Justin, welcome. I am glad to see you here. We now recognize you, Mr. Mattes, at this time.

MR. MATTES: [Incomprehensible comments.]

[Twenty-five-year-old Justin Mattes suffers from cerebral palsy after his mother's obstetrician failed to get basic information about the baby's position and allowed a vaginal delivery to go forward with the baby in a breech position, i.e., feet first, without taking steps to protect the baby's health. This caused Justin's umbilical cord to be compressed, preventing him from getting oxygen. He was born blue and had to be resuscitated. He also had seizures the following day. As a result, Justin has difficult walking, talking, eating, and getting dressed.]

[His parents did not file a lawsuit at the time Justin was born. He filed a lawsuit once becoming an adult and settled the case before trial for the doctor's policy limit of \$500,000. This limit, based on the 1978 economy, is worth about \$100,000 in today's dollars.]

[Justin says, "I am a victim of medical malpractice. I have cerebral palsy because my mother's obstetrician committed medical malpractice in the way he handled my mother's delivery when I was born. A \$250,000 cap on non-economic damages would take away the only

opportunity a person like me, who has suffered a permanent disability because of a doctor's medical malpractice, has to live with some amount of independence and to enjoy some of the normal dignities of life. A \$250,000 cap on pain and suffering damages if applied to my case would not even begin to compensate me for the daily pain and suffering I have already experienced in my life, much less what I will continue to experience. For example, I had terrible trouble at school, especially with teasing. My mom had to fight to keep me in regular classes. I have had people say that I am retarded just because my speech sounds funny. A disability like mine causes a lot of emotional damage."]

MR. CONYERS: Thank you, Justin Mattes.

[Applause.]

MR. DELAHUNT: Justin, I know I speak for all of my colleagues. You are a person of great dignity. Thank you.

[Applause.]

MR. CONYERS: This was a problem after his mother's obstetrician failed to get basic information to protect his health when he was being born. His umbilical

cord became compressed, no oxygen, born blue, had seizures, and has had difficulties ever since. Justin, thank you for being with us today.

[Applause.]

MR. CONYERS: Now, for a minute each, and we will start with you. We want to take a minute and go around the room and talk to a few more of our friends and then we will open ourselves up for questions and comments. I would like to also recognize one other person here. Please.

MS. MUSCARELLA: Thank you so much. Very briefly, my dad was given a medication for a condition he didn't have. It caused his death. This had happened with one other patient of my father's doctor. The medication had killed over 100 people nationwide. It was taken off the market two months after it was given to my father.

As I have gone through this very, very powerful day, one phrase goes through my head over and over. I am a public school teacher. Every morning, my students stand up in class and say the Pledge of Allegiance, and let us all remember that that pledge ends with, "and liberty and justice for all." That includes people who are victims of

malpractice, medicine practiced badly by people who should be removed from their professions. Thank you.

[Applause.]

MR. CONYERS: Thank you so much.

Let me make it clear, this is not an anti-doctor operation. We are for doctors. We support good medical procedures.

[Applause.]

MR. CONYERS: We support good health care delivery. As a matter of fact, what we want to do is improve it.

Mark, great to see you, and thanks for being with us.

MR. UNGER: Thank you for having me. Just briefly, my mother was also killed by a physician on a medical mistake. He failed to follow protocol and did not test at 24 or 48 hours. When he did test the medication at 72, he mistook the lab results, which were sent to him in macrograms, for nanograms, which is a factor of 1,000. The drug was methotrexate, which is a cancer medication, and it coursed through my mom's body, burnt her organs from the

inside out, caused her skin to slough off, fall off. She was on four IV pumps, morphine, dilantin.

When we decided that it was over and pulled the plug, it took 16 hours for her to die. They told us she was on so much pain medication that her nervous system was shut down, her diaphragm would collapse, she would quit breathing. They pulled her off the respirator and she went from 24, which the machine had her at, to 30, so we had no choice but to remove fluids.

The other bummer of it is I am the system. I was the system. My mom worked in the medical profession for 18 years at the facility which treated her and killed her. My aunt and some other family members are in the medical profession. I was in it for three years, and the medical profession failed us miserably and we felt extremely safe in those surroundings. They need to be held accountable for their actions and their negligence, not the patients. Thank you.

MR. CONYERS: Exactly. Thank you, Mark Unger.

[Applause.]

MR. CONYERS: Sally Greenberg, and then we will

come down there to both of you. Ms. Sally Greenberg,
Consumers Union.

MS. GREENBERG: Thank you, Mr. Chairman. I want to do a couple of brief things here. One is I want to honor the presence of all of the people who have come out today. You really are the conscience of this Congress at a time when we see access to the courtroom doors being slammed across the board.

Right as we speak, the Senate is over debating the class action bill, which is just another attempt to prevent consumers and patients and anyone else who has been wronged, either by fraud or negligence, from getting access to the courthouse. We are really sorry to see so many members, both Democrat and Republican, lining up with the big industries and saying these are frivolous suits. Every suit is a frivolous suit to these industries. Everybody who tries to get justice in the courts of America is looking for a jackpot, if you listen to their side of the story. So I think it is so important that you are here to remind members of Congress why they were elected.

And while I am at it, I just want to thank the

members of Congress who are here today, the House members, because they are up against the most powerful lobbies in America. They have to raise money like every other member of Congress, but they have said no to the drug industry, to the doctors who pound on their doors and say, we want to stop lawsuits, all lawsuits, basically. They have said no to the device manufacturers and to the drug companies and to the nursing home industry, and that is hard to do. It takes a lot of fortitude.

They remember why they were elected and they remember the people who elected them, and they are few and far between in this Congress, both in the House of Representatives and over in the Senate, so I want to thank them for being willing to stand with you all and for consumers.

[Applause.]

MS. GREENBERG: I just want to say a few words to describe what the House bill will do and why we think it is such a bad bill and such a wrong bill.

First of all, it is overly broad. It would limit not just medical malpractice cases, but also protects drug

companies from product liability cases. It protects the nursing homes, as I have said, bad faith insurance, defective medical device companies, or protects companies who make medical devices against defects in those devices.

It would apply a discriminatory cap of \$250,000. We know what California did. California did that in the mid-1970s. They are taking that number, \$250,000, which is worth, by the way, about \$800,000-plus today, and using the cap from the 1970s and putting it into this bill.

As Congressman Delahunt said so eloquently, that is a moral issue. It is absolutely unconscionable that this Congress would consider it. But they are pushing hard, and this House of Representatives has already passed a bill which calls for a \$250,000 cap and the likelihood is that they will do it again.

The bill would also impose severe caps on punitive damages, which are used to punish defendants when their conduct is found to be particularly egregious, and it would further protect drug companies by giving them complete immunity from punitive damages in product liability cases.

Finally, it would wipe out State law even in

States that already have dealt with the issue and passed their own so-called tort reform laws.

I want to say one last thing about this bill. If you read the findings and purposes of this bill and then you read the bill, you see what a fraud this bill really is. They are talking, in the findings and purposes section, they talk about how the bill is intended to provide plaintiffs with fair and adequate compensation, including reasonable and non-economic damages. Is \$250,000 reasonable non-economic damages in Steven Olsen's case?

The bill would improve fairness and cost effectiveness of our health care liability system to resolve disputes. We know that that is--there is nothing in this bill that addresses those issues.

And finally, it says that the bill would provide an increased sharing of information in the health care system. There is absolutely not one word in here about reducing medical errors. The bill is all about restricting access to the courts and taking collateral damages. It gets rid of joint and several. It caps non-economic damages. It caps punitive damages.

So the opening comments in this bill make it out to be something it absolutely is not and we should call it what it is. It is a fraud. Thank you.

[Applause.]

MR. CONYERS: Thank you so much. Consumers Union, one of our very strong organizations that is working with us.

Ms. Lewis, welcome. Just briefly.

MS. LEWIS: Very briefly. First of all, I just want to say to you personally that I have followed your career over the years, and to me, you are the model Congressperson. If we had a couple hundred more like you, this country would be in far better shape than it is.

[Applause.]

MR. CONYERS: We are all like each other.

MS. LEWIS: Of course, that goes for everybody at the table, as well.

[Laughter.]

MS. LEWIS: I just want to say, this is--I have been trying to prop up the picture of my son here. This is Miles Buckley.

I am just going to say that in 1985, I gave birth to Miles and his twin brother, Christian. Despite the fact that my husband--at that point, it was the height of the AIDS crisis in Manhattan, New York. My husband--we were told at one point that because the boys were slightly premature, they might need a blood transfusion. We said no to any transfusion. You know, AIDS is out there. We will give the blood.

My husband gave blood, a pint of blood. The hospital proceeded to fractionate the blood seven times and sell it to seven other people. They gave Miles, on the other hand, at 4 a.m., or twice a week for the number of weeks that he was in the hospital to gain weight to come home, they gave him a plasma product. The eighth dose was contaminated with AIDS.

My son, Christian, on the other hand, who was the heavier of the two children, was advanced quickly into the neonatal nursery. Christian is fine.

So it comes time for the boys to come home. The first time that I bring--Miles never did very well, but the emphasis quickly shifted to Chris, because we took the boys

to their regular doctor visits and the doctor said, "Something is wrong with Chris's eye. You had better get him to an ophthalmologist." Well, Christian is now legally blind because during the time that he was in the nursery, he had developed retinopathy of prematurity. It was a condition that usually progresses to total blindness. They never intervened. They didn't tell us about it until three months afterwards, when his pediatrician picked it up. Christian underwent surgery. His eye--they took out his lens. He is blind in his left eye and he is legally blind in his right eye.

Meanwhile, Miles, the day after Christmas of 1985, was diagnosed with AIDS. It took nine years for this case to settle, and it was only after Miles died, and he fought for five years to live. We begged for a settlement. They did everything conceivable. And all of the power in New York State is in the hands of defendants' firms and the lawyers and the hospitals. They waited until Miles died, when the value of the lawsuit is de minimis.

In New York State, rarely is there a case of a child, a child that has no income production, receiving an

award more than \$150,000. Eventually, the case settled and I live with this every day, that it is my fault that my son died. It is my fault that my son--and I never got satisfaction through the legal system.

To say that any of us here--we are just representative of the masses of public who sustain these injuries and try to get compensation. There isn't a one of them--I would say that there is not such a thing as a junk lawsuit that is a malpractice suit, medical malpractice. There is not a single case of malpractice that is a frivolous lawsuit.

[Applause.]

MS. LEWIS: Please bring that message. This is a different category of litigation. This is not slip-and-fall. Tort has some bad names. Commercial lawsuits constitute a whole mass of economic expense. Focus on those for a while.

Finally, all I wanted to say, and I value very much your giving me this time to speak on behalf of my sons, I want to say that another issue that seems particularly sinister to me about this bill is that, in fact, the

wealthiest among us will always be able to bring a claim. If they have a medical malpractice action--let us say a GI surgeon has a problem that is going to affect his income-producing years. He will get his \$11 million that he would have earned over his career. He will find an attorney to pick up his case. It will be a value.

I also want to say that I am very proud to be here today. I went on to law school. I represent malpractice victims, and this is one of them right here, Mr. Leyda, who I represented in court last September, who we got justice for and came here today from Florida to be with you.

[Applause.]

MR. CONYERS: Congratulations, Attorney Leslie Lewis. We are so proud of you. That is the kind of coming together that makes us all stronger.

Andrew Zuckerberg?

MR. ZUCKERBERG: Thank you.

MR. CONYERS: Good afternoon.

MR. ZUCKERBERG: Good afternoon. Thank you for allowing me to speak. Just a few quick things I wanted to point out.

I have kind of been inundated with literature these past few days on medical malpractice and what we are all doing here today and just some of the things that I wanted to point out that I have personally found is that putting caps on medical malpractice is disciplining the victims more than it is disciplining the doctors. The doctors no longer have any incentive for safety. It is undermining the need for safety in a doctor's office.

Huge punitive damages are supposed to deter bad behavior. However, limiting the amount of money that someone can get in a medical malpractice case is not going to be a deterrent to doctors. As a matter of fact, in the State of Florida, where I reside, doctors are not required to have malpractice insurance in order to practice medicine. So what would a cap of \$250,000 mean anyway to a doctor that doesn't carry insurance? It means nothing. A doctor can make mistakes all he wants and close up shop. If his money is placed in the right places, you can't touch him.

My mother was the victim of malpractice and she passed away in 2003. She survived five years longer than the doctors had given her to live. When they finally

decided to go in and investigate more on what was causing the problem, she was already at Stage IV cancer, which is the last stage you can be at.

I happen to be getting married this weekend and unfortunately I am not going to have my mom to be there for my wedding day, which is probably the most important day of my life. This was due to a mistake or an oversight or whatever the doctor wanted to call it, which ultimately resulted in the loss of my mother's life.

MR. CONYERS: Congratulations to you and our best wishes, Mr. Andrew Zuckerberg.

[Applause.]

MR. CONYERS: Let me go to Ken Duplechain, and then I will come back to you.

MR. DUPLCHAIN: you, sir. I would like to start as we introduced distinguished people at that table right there, along the lines of what you did. I lived in Houston for ten years, so I would just like to better tell my friends that I met Ms. Jackson Lee. But we clapped for all of you. I would like for everyone to clap for my hero, C.J. Duplechain, my son, right over there.

[Applause.]

MR. DUPLECHAIN: In December of 2003, my son went in for a very minor 15-minute procedure, a gastroscope to see how bad a hiatal hernia and deal with his acid reflux. Something went terribly wrong. He went into cardiac arrest. He was clinically dead for 20 minutes. The adrenalin shot was not given to him, which is normally given within the first minute, was not given to him until the 15th minute.

He sustained severe brain damage. He has lost his eyesight, basically. He cannot roll over, sit up, talk, or do anything. He has a twin who has been able to do everything and some people have to--you know, some people say, maybe it is better you see the other one. You just really don't know which one is better. Is it better that you get to see the other one or does it make it hurt more for him?

We don't know what his life is going to be like. We don't know if he will ever--he is 18 months old. We went to get pictures just a couple of months ago and we had to hide behind the cloth to hold him up and at the same time try to keep his twin brother from getting off the table.

I don't want to speak too long. The government wants to get in, like everyone was saying today, well into our business, and in the Declaration of Independence, this is not what the Founding Fathers wanted. They stated that if government denies people their rights, the people have the right to alter or abolish it.

I, by my own admission, am not an extremely feeling man. I don't cry too often, and I am sitting here today and I am tearing up with everybody's story. I am sure my mother is not happy with me saying this about myself, because I was raised right, but I just--I don't have that. So whenever I think about the ladies and gentleman in that room voting for that cap, a man like me, all I can think is how cold are they?

So I would like to challenge every one of them, you show me, us, and all your constituents, you show them how much you feel or how much you don't, not because of a dollar but because of your heart. Thank you.

MR. CONYERS: Thank you, Ken.

[Applause.]

MR. CONYERS: Some of my colleagues have suggested

that this summer, we ought to enlarge this coming together to consider the assault on consumers, not just medical malpractice but the class action cases, the bankruptcy cases, the asbestos cases, and that we should have a much larger coming together in a much larger forum. If you feel sympathetic toward that, please indicate that to me now so that we can begin putting it on our website so you will know more about it.

[Applause.]

MR. DELAHUNT: Can I add to that? You know, I just want to follow up on Ken's comments, and I think Kathy Olsen said it at the beginning better than anybody could say it. Who represents the children?

This is, in many respects, about the children. I guess, Kathy, in the halls of Congress, tragically, nobody is representing the children today. It isn't just anti-consumer. This is anti-child. That is what this is about, because those are the people that are going to suffer from capping non-economic damages. It is the youngest among us that are going to suffer the most for the rest of their lives.

We have seen these children here today. I would like to challenge our news and media outlets to bring the children on those talk shows and ask them the questions about fairness and equity and justice in this country. That would make one hell of a program.

[Applause.]

MR. CONYERS: Thank you. Assault on consumers, especially children.

I am pleased now to call Rebecca Brailsford.

MS. BRAILSFORD: Thank you, Chairman. Just briefly, and if you would like to know our story, I have it here in print, but I am a mother who delivered twins three months early and it was totally preventable had I received the proper medical care, and I also ended up delivering one of them after being in the hospital for four hours, ended up with an emergency C-section without any form of anesthesia. So that is just briefly what I endured, but I have both of my sons. They are still alive.

But what hasn't been said, and I could tell you the horrificity that took place that day and what has gone on, but something that inspired or drove me to come and be

here today was a comment that President Bush made in his inaugural address where he stood up and justified us being in Iraq as a way that we needed as a people of the United States to take freedom to every corner of the world. But yet he is trying to take our freedoms away as his own citizens, the very basic right we have to seek justice. Our basic freedom, he wants to simply write away with a signature of his pen. It just seems so contradictory to what he stands for.

The other thing that has bothered me as years have been talked about the caps is when is the legislature going to put a cap on the pain and suffering that my child ensures every day of his life? They can't do it. They can't tell me. My son has undergone 72 surgeries. He is 11 years old. When will they legislate for his pain and his suffering to end, that his life can have somewhat of normalcy to it. That is what I would like them to tell me. If you want to put caps, then cap the pain and suffering every one of us feel in this room. The money doesn't do that.

What does the money do for me, settlements? It gives them a form of a quality of life that was taken from

them. There are doctors that do the damage, but thank God, there are doctors out there who have also brought life, who have also mended, who have also cared for and given my son a form of a chance to this life. So we are not against doctors. There are wonderful physicians out there who I love with all my heart.

And the other point I think that they need to realize is that not one of us go into a procedure expecting to come out having suffered medical malpractice. We don't plan on it. We don't ask for it. But, by golly, don't injure us again by putting a cap on what our injuries are worth. Let them walk a day in any one of our shoes. Let them spend a day with us. Let them change my 11-year-old son's pants and feed him through a button in his stomach. You can't even walk around the Capitol building in a wheelchair right now without lifting him up and over curbs. Have them just spend a half a day with us, walk in our shoes, feel what we feel, and then go in there.

Let our faces be present when they want to make this vote. Why do they lock us out? Do they not want to see and know the consequences of their decision? I would

like to see them stand independently and hear us and not follow a party, not follow the majority, but follow the feelings of their heart and what they know within themselves is the right choice to make. Thank you.

MR. CONYERS: Thank you.

[Applause.]

MR. CONYERS: Are we glad we called on you and everybody before you.

Congresswoman Sheila Jackson Lee, and then we have one minute each for four more people, and then we will conclude.

MS. JACKSON LEE: I thank you, Mr. Chairman. I guess the appropriate response would just be silence to absorb both the courage, the lack of fear in coming here. I want people to understand that this is not a pleasant experience to sit in this room. I cannot speak for you, but I imagine if I would speak one on one, this is not frivolous, it is not junk, it is people who were willing to expose themselves to be able to have the truth known.

I am going to say to Mr. Conyers, and I agree with the comments that were made, in actuality, you are in the

Judiciary Committee room. This is a room of justice. We have this forum because of the leadership of John Conyers, but let me make a public plea. Let me call upon the full House Judiciary Committee to open the doors of this room for a full Congressional hearing that allows you to be before a combined Judicial Committee to listen to the voices of America and to be able to make the right decisions.

[Applause.]

MS. JACKSON LEE: I just want to offer you, because I appreciate the chairman's comments and our comments, and I wanted to go, because there will be one blip that gets out of all this, something about doctors, and you don't like them. Let us make it very clear, this is not isolating the medical profession. This is talking about perpetrators of injustice, individuals that didn't see Ken's baby boy, Kathy, and Mr. McCormack and somebody that was asleep with a beeper. Maybe it is okay for a politician's beeper not to go off, but not a physician, and all of the stories that are around here.

And if we think we can rely, Mr. Conyers, on medical boards, let me just be bold and cite my State.

Texas ranks 32 among all 50 States and the District of Columbia when it is diligence in taking disciplinary action. In my newspaper just this weekend, a physician who had operated on people unnecessarily, who had been one of the biggest recipients of Workmens' Compensation money was finally caught, if you will, after he had performed surgeries on people who are now bedridden because they didn't need the surgery.

And so this cites to you a very point that Mr. Hunter had just made. There is no oversight. The rate of serious actions by the Texas State Board of Medical Examiners in 2001, 2.5 per 1,000 physicians. They would miss your physicians. They would miss the attending physicians.

So I just want to conclude on this. We believe what the President offers is over-broad and we believe that there is a place for punishment, not in a malicious and vile way, but in a fair and just way, that when you do harm where you could have avoided it, or some nurse or someone could have not been on the phone while some patient fell off of an examining table, that is avoidable.

And so I would simply want to just put in the record that punitive damages would be eliminated by what is being proposed, and if they can present language that eliminates punitive damages in listening to your stories, then there is no justice and this room should turn off the lights and close the door.

Mr. Chairman, I hope we will have full hearings on this to be able to answer the questions why the proposed Republican plans of the President of the United States do not answer the questions of the American people and the stories that are being told here. There is no frivolousness here. There is no junk. It is just the hearts and souls of the American people who want fairness and justice for all. We deserve to have you heard in the United States Congress.

MR. CONYERS: Thank you, Sheila Jackson Lee.

[Applause.]

MR. CONYERS: We couldn't agree with you more.

Now, before you hear thank yous from my three colleagues, I want to recognize just briefly, and I haven't had to cut anybody off yet, but Dylan Malone, Camille Teichman, Helen Haskell, and Kristine McCown, in that order,

please.

MR. MALONE: Thank you. I will be very brief. In fact, I won't even tell you how Ian was injured because I did testify two years ago and you took great notes, so you can refer to that.

But I will tell you something I didn't know that I learned since then. The obstetrician who hurt Ian, and it was a grievous and outrageous case of malpractice, had lost eight other suits, I now know, before I had ever laid eyes on the man. And since Ian's case, more people have died under his care. A little girl lives about 15 minutes from my home whose condition is very similar to Ian's, also treated by the same physician.

It is a handful of doctors that cause the lion's share of the injuries, and it is frustrating that we come here to Washington, D.C., year after year, and I am a huge fan of Mr. Conyers and all the other distinguished lawmakers in this room, but this message needs to go broader. This isn't a Democrat or a Republican issue. We are all patients. Anyone here could be in the same position I am.

My son, since I was last here, died. He died this

summer at the age of four-and-a-half after years of surgeries and seizures, and I said at his service that I would try and honor his memory by improving the system for those who are going to come after him.

So I ask you, please help us. There is a crisis. There is a terrible cost being paid and they are focused on the wrong cost. They are looking at fiscal issues and there is a human cost.

This is what is expensive about medical malpractice. I ask you to deal with that issue. We should be holding everybody accountable. Repeat offending doctors, lawyers who file frivolous suits, and reforming the insurance industry. Don't punish the victim. They told us--our insurance company told us to put Ian up for adoption. That was their solution to his injuries.

I won't talk any longer on a very tight schedule.

MR. CONYERS: Thank you, Dylan. Dylan Malone.

[Applause.]

MR. CONYERS: Ms. Teichman?

MS. TEICHMAN: I want to thank you for your time. I am the parent of Michelle Teichman. She is now 19 years

old. My daughter also is a victim of medical malpractice.

When I was brought to the emergency room, the physician went to pick her husband up at the hospital and left me there as the victim of a near-fatal collision and there was no one there to help me.

Fortunately, my daughter's case settled. However, I do have a gripe regarding the insurance company because it was an out-of-court settlement which was based on pain and suffering, so a \$250,000 cap would not have even cut a year of services for nursing that my daughter required. But when we reached settlement, the insurance company then slapped a lien on my daughter's lawsuit to recoup all medical monies up to and including the lifetime limit of her policy, which would have virtually wiped her out of her settlement claim.

This, then after ten years of her malpractice case, put me then into an appeals court. I went to Brooklyn. I won. Then the insurance company counter-sued and went up to the Court of Appeals in Albany. The judges there ruled that there was no subrogation because they were trying to assert a subrogation ruling here and there wasn't. They had no right to that. But these judges did rule the

court back to the court of origin, which put us in another several years of litigation trying to defend my daughter's case, if there was no subrogation.

It did end that they ruled money to the insurance company, because they most probably put money aside for medical expenses, and my choice was either accept that or start all over again, and after ten--or it was about 14 years at that time, I wasn't ready to start all over again, so we sort of accepted what we had. We are not greedy. We had enough for her to survive on and to provide her care.

However, I have had since then subsequent claims with the insurance company. They have continued to deny and deny. I have had two other lawsuits against the insurance company to recoup my daughter's medical expenses for nursing, which they wiped her out of. She had gone through her second neurosurgery in one year and they said there was no medical necessity. She didn't require nursing care, and they wiped out her nursing care. I had to fight for that. And then the day that that was settled, they turned around and wiped her out of her therapy care and I had to fight to protect her rights with that.

So, you know, it is like who is greedy here? The insurance company just doesn't let go. Their attorneys even said, "She is back again?" because I refused to give up. It is part of my daughter's right to have her medical issues addressed through my insurance. I work and I pay for my benefits and she is entitled to that as a matter of principle.

So I am here on behalf of all the other victims of medical malpractice because this is a matter of principle. We all need to make them see the true picture. These are not frivolous cases and we are not talking about dollars and cents. We are talking about human lives. These are human beings and they are entitled to the same rights as everyone else in this country.

MR. CONYERS: You represent them well.

[Applause.]

MR. CONYERS: Mrs. Haskell?

MRS. HASKELL: This is my son, Lewis Blackman. Lewis is the same age as Camille's daughter--he was the same age. Lewis died at the age of 15. He was a perfectly healthy child. We took him to the Medical University of

South Carolina for what was essentially cosmetic surgery on a dent in his chest. We had read about this in an article in the paper and it was supposed to be safe, minimally invasive. We thought this was something nice we could do for our son.

What they neglected to mention was that it had a very complicated pain regimen, because it was an extremely painful operation, one that--a pain management regimen that it took a lot of expertise to handle.

He was left in the care entirely of resident physicians. He was killed by resident care. On the Sunday three days after his operation, he suddenly developed acute pain. We went all that day with him declining further and further into shock, developing huge circles under his eyes, his belly distended, his temperature dropping, his pulse racing. No one recognized this basic medical condition.

The next morning, he had no blood pressure at all. He had a pulse of 155, double a normal pulse. And still, nothing was done. No doctor was called. We thought all morning that we were waiting for the doctor.

By noon, someone came in to take his blood.

Lewis, in spite of all this--it seems almost ironic now--had a fear of needles. He said, "Oh no," and they said, "Oh, yes, buddy." And when they took his blood, he fainted. He turned to me and he said, "It's going black," very slowly and deliberately, with great effort. I didn't understand him at first. He said it again. "It's going black." And then he arced into cardiac arrest.

The blood technician skedaddled. I ran into the hall. I didn't know, I didn't realize that he was dead. The same resident who had misdiagnosed him the day before came in. They had been insisting all along that he just had gas pain. They looked at him and they calmly told us they needed to do a procedure and asked us to leave the room. Well, the procedure was resuscitation. Like 90 percent of cases of resuscitation, it was not successful. An hour later, they declared our son dead.

The result of this has been devastating to all of us. This boy was in the top 0.1 percent of American kids his age academically. His sister's life has been torn apart by this. Our lives have been torn apart by this.

We received--I hear these legal horror stories.

We received better treatment than most people once our son was dead because this was before tort reform. And there was a moment after the Institute of Medicine report and before tort reform where people were genuinely trying to reform the system and improve the system, and we walked through that moment. We did not have to file suit against the medical university. We had to have the threat of filing suit, but they settled with us out of court, openly, and have worked with us since then.

But what I have seen since then is that the situation is getting worse and worse and worse as managed care puts more of a squeeze on doctors and hospitals, and that is really all I have to say. I know there are other children who die just the same way as Lewis. But the crisis is not in the legal system. The crisis is in the health care system and it is a crisis that is reaching epidemic proportions and I thank you very much.

MR. CONYERS: Very well said.

MS. JACKSON LEE: Just very briefly.

MR. CONYERS: Sheila Jackson Lee?

MS. JACKSON LEE: Mr. Chairman, and to all of the

witnesses, to all of the families, to those who families have lost, let me thank you for sharing your story. It allows us to go armed, if you will, and I am so glad you said this is an American story. You are right. Proposals happen to be divided by party. Someone has proposed something. But it is not a party or a political issue, it is a human issue.

What I will promise you with my colleagues is to be able to take your stories and explain, Mr. Chairman, what an overbroad legislative initiative can do, what not understanding punitive or being able to redress your grievances, what the \$250,000 cap would do to the stories that have been told here today, and most of all, I think the most important aspect of this testimony, Mr. Chairman, is rich will be able, and we are not talking about rich people, we are not condemning doctors, we are not condemning health professionals, but we know that the courthouse doors will be open to those who can retain a counsel at any price. But those who are left with nothing but the injured or victimized person or maybe the funeral that they attended will have no relief. We owe it to you to act and to act

now.

Mr. Chairman, thank you for allowing me to be here.

MR. CONYERS: Thank you.

[Applause.]

MR. CONYERS: Kristine McCown, last speaker.

MS. McCOWN: I would like to say I have had two strokes by the age of 29 by taking the medication Vioxx, which we were lied to about due to pharmaceutical companies. I would like you to ask President Bush and everybody that you know how they would feel if they were at 29 years old, had a family, were on their way up, they knew that they were on to better things, ask them how they would feel if somebody capped their life at \$250,000.

I would like to thank you for having us here today. Thank you.

MR. CONYERS: Thank you for coming.

[Applause.]

MR. CONYERS: Massachusetts' greatest, Bill Delahunt.

MR. DELAHUNT: Thank you. Let me just say to all

of you, you are truly inspiring. You have inspired us. I remember again that hearing of last year or the year before. I left energized, angry, and I am going to leave the same way today.

You know, I think it was Helen Haskell that talked about it is not a legal crisis but it is a crisis in health care. I would like to go back to what I said originally, Helen. If this law passes, I think it is fair to say that we find ourselves in the midst of a moral crisis because that is what this is really about.

I mean, this is America. We distinguish ourselves, if you will, among the family of nations for being compassionate, for doing the right thing, for being fair.

You know, my colleague from Texas indicated that it would be good to have a full official committee hearing. If that should not occur, then what I would recommend to you is to solicit the chairman of this committee to have a similar listening session for those who were unable to attend from both sides of the aisle today. Our colleagues on both sides are good and decent people. I just don't

believe that they have given this particular issue a human face, because if they did, they couldn't support this legislation. They just couldn't do it.

I suggest you do the same thing on the Senate side. Approach the senior Republican--I think it is Senator Specter--on the Committee on Judiciary. I know my friend and colleague whom I happen to--also, we share our living quarters--Senator Durbin has put through his proposed legislation. I know he would be happy to host a similar listening session.

If that effort is unsuccessful, there is going to come a time when there is going to be a vote on a medical malpractice proposal on the floor of the House and the floor of the Senate. Come back and circle the Capitol. Bring your children with you, because again and again, what we are hearing, so many of your stories are about, as Kathy Olsen said, are about who represents the children. We can't just speak of family values and then ignore--ignore the realities, that the most vulnerable in terms of the proposals that are being seriously considered will absolutely, absolutely denigrate the hopes and dreams of

children who were victims.

This is not our America. This is not what we are about as a people. Look at the photos that we have seen. It is just not right. You are the human face of what I think is best about America. You are our better angels, and thank you so much.

MR. CONYERS: Thank you.

[Applause.]

MR. CONYERS: Thank you. Virginia's Bobby Scott.

MR. SCOTT: Thank you. Thank you, Mr. Chairman. I appreciate you calling this hearing. As has been pointed out, this is technically not an official hearing. It is a forum where we can listen. The full committee has decided not to hold hearings, forums like this, where they can hear what is going on in medical malpractice, where we listen to the cases.

It has been pointed out that we are not capping damages for everybody at \$250,000, just some will get capped at \$250,000. If you are able to show future income that you might have made, you are unlimited, millions of dollars in recovery while others are relegated to \$250,000.

These changes are designed to create barriers to justice. It is not injustice, it is just barriers. And you look at each one of the details in this bill where you not only reduce the amount of compensation, you add complications to the case, you add expenses to the case to be brought, increasing the work of the lawyers, making it virtually impossible in some cases to even bring a case. That is not fair. Even in a clear case of malpractice, where you add up all these complications, it will be impossible to bring a case for justice for some. Others, if they have enough damages, can go forward.

They call these cases frivolous. It was just yesterday, as some on the floor of the Senate were talking about the asbestos victims bringing these frivolous cases when there are people, many people who have died in my district, thousands in my district have died for asbestos, at the same time, they were talking about how frivolous these cases were, the Justice Department was indicting one of the companies for illegally exposing people to asbestos, a criminal complaint. You have criminal activity, victims dying, and some want to call the situation frivolous and

want to bring the whole weight of the Federal Government on the side of the people who had committed the crimes and have nothing for the victims of the criminal acts.

Well, in this case, we have victims, innocent victims of malpractice who ought to have the opportunity to have their case heard, those cases heard in court. We are going to do everything we can to try to maintain the avenues to justice without the barriers, without the complications, without the additional expenses, without cutting back on what someone may be able to recover so that, as it has been pointed out in the Pledge of Allegiance, we will have justice for all.

I want to thank you for putting a face on what the situation is. These are not frivolous cases. These are cases that demand justice.

MR. CONYERS: Beautiful.

[Applause.]

MR. CONYERS: With people like Jackson Lee and Scott and Delahunt, it is easy to be the ranking member here.

And Michelle at the end of the table has pleaded,

could I just get one minute. Michelle?

MS. GEYER: I would just like to say, I am from California, like the Olsens, the State which has got the so-called wonderful MICRA law that President Bush would like to use as a model for a national cap.

I am here to speak for my daughter, Jessie. She died a little bit over a month over her seventh birthday. What had happened to her is one morning, she woke up. She had an extremely high fever and she couldn't walk. I rushed her to the pediatrician's office. He took one look at her and he said, "Michelle, I want you to rush her to emergency. I am afraid she has got a bacterial infection and we need to rule that out."

So I rushed her to emergency, spent most of the day here. They came back and told me, "Mrs. Geyer, everything is fine. We ruled out septic. She just has the flu which should last three to four days. Treat her with Motrin and bed rest." I was thinking, oh, great.

So I go home. This is two days before Halloween. My two younger boys went trick-or-treating. Jessie stayed on the couch. Around 10:30, she said, "Mommy, I am ready to

go to bed." So I took her upstairs because she couldn't walk, and about 20 minutes later, she called my name and I ran up there and I bent down to say, "What, Baby?" and she was completely cold. Within a minute, she started turning blue. And I screamed for my husband and he came and he goes, "Oh my God, she's going into shock."

We rushed her to the emergency room, which was five minutes away from our house. They couldn't find a vein, and Jessie's eyes were wide open and she was looking at me and my husband and I were right down by her face telling her, "Hang in there, Baby. It is okay. They are going to fix it. Something is wrong. It is just the flu." She closed her eyes and flat-lined.

We didn't have a cause of death. I couldn't get an answer from the doctors. I asked them. I tried. I had to get the medical records, and that is when I found out they didn't do a culture. That is all they had to do, was do a culture. They lied to me and put her on antibiotics. Jessie would be alive today.

I called an attorney and that is when I found out about the MICRA law and I made it my crusade to try and

change it and get the word out, like all these people here, because I couldn't get an attorney. They turned me down because she is only worth \$250,000. They told me it was a bad business decision for them to take it. I wasn't turned down by one, two, three, four, five. The fifth one I finally begged and he took it out of just the goodness of his heart, I guess, because Jessie isn't worth--she doesn't get anything more than \$250,000 because she is dead.

I just really appreciate you hearing my story.

Thank you.

[Applause.]

MR. CONYERS: We will do everything in our power to see that we will never let pain and suffering be capped at \$250,000.

[Applause.]

MR. CONYERS: I promise you that.

[Applause.]

MR. CONYERS: I am more encouraged than ever. The numbers are growing. We need more people to come in who are not the family of victims. We want people to get in this before they get touched, like most of us have, and that is

what we have to do is grow our ranks.

And so I am so proud of my colleagues, many of whom are winding their way here today that aren't able to be with us, but particularly the ones that have been with us.

We love you, we respect you and we mostly admire the unbridled courage that you bring to your legislators here in Washington, D.C. God bless you all and thank you for coming.

[Whereupon, at 4:30 p.m., the proceedings were adjourned.]